

1 the illegal actions of AT&T TELEHOLDINGS, INC.; (“Defendant”), in
2 negligently, knowingly, and/or willfully contacting Plaintiff via “telephone
3 facsimile machine” in violation of the Telephone Consumer Protection Act, 47.
4 *U.S.C. § 227 et seq.* (“TCPA”), thereby causing Plaintiff and all others similarly
5 situated to incur the costs of receiving unsolicited advertisement messages via
6 “telephone facsimile machines” and invading their privacy.

7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 *U.S.C. § 1332(d)(2)* because Plaintiff,
9 a resident of California, seeks relief on behalf of a Class, which will result in at
10 least one class member belonging to a different state than that of Defendant, a
11 company with its principal place of business and State of Incorporation in Delaware
12 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of
13 the TCPA, which, when aggregated among a proposed class in the thousands,
14 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
15 diversity jurisdiction and the damages threshold under the Class Action Fairness
16 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

17 3. Venue is proper in the United States District Court for the Central
18 District of California pursuant to 28 *U.S.C. § 1391(b)(2)* because Defendant does
19 business within the state of California and Plaintiff resides within this District.

20 **PARTIES**

21 4. Plaintiff, VAHE MESSERLIAN (“Plaintiff”), is a natural person
22 residing in Los Angeles County, California and is a “person” as defined by 47
23 *U.S.C. § 153 (39)*.

24 5. Defendant, AT&T TELEHOLDINGS, INC.; (“Defendant” or
25 “DEFENDANT”), is a marketer of medical products, and is a “person” as defined
26 by 47 *U.S.C. § 153 (39)*.

27 6. The above named Defendant, and its subsidiaries and agents, are
28 collectively referred to as “Defendants.” The true names and capacities of the

1 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
2 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
3 names. Each of the Defendants designated herein as a DOE is legally responsible
4 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
5 Complaint to reflect the true names and capacities of the DOE Defendants when
6 such identities become known.

7 7. Plaintiff is informed and believes that at all relevant times, each and
8 every Defendant was acting as an agent and/or employee of each of the other
9 Defendants and was acting within the course and scope of said agency and/or
10 employment with the full knowledge and consent of each of the other Defendants.
11 Plaintiff is informed and believes that each of the acts and/or omissions complained
12 of herein was made known to, and ratified by, each of the other Defendants.

13 **FACTUAL ALLEGATIONS**

14 8. Beginning on or around November 14, 2018, Defendant contacted
15 Plaintiff on his telephone facsimile numbers ending in -8480, in an effort to sell or
16 solicit its services.

17 9. Defendant contacted Plaintiff, by sending a facsimile transmission,
18 between on or around November 14, 2018 in an effort to solicit its customer's
19 business.

20 10. A true and correct copy of the fax, sent by Defendant to Plaintiff, are
21 attached hereto as "Exhibit A."

22 11. Defendant's messages constituted "telephone solicitation" as defined
23 by the TCPA, 47 U.S.C. § 227(a)(4) and "unsolicited advertisement" as defined by
24 the TCPA, 47 U.S.C. § 227(a)(5).

25 12. Defendant used an "telephone facsimile machine" as defined by 47
26 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its
27 customer's business services.

28 13. The owner of Mr. Right Construction, the service that AT&T

1 Teleholdings, Inc. is soliciting, stated that his fax blasting services were provided
2 by AT&T Phone for Business.

3 14. Customer support at AT&T Phone for Business also confirmed that
4 customers can pay for fax services, e.g. 300 faxes for \$10.00 per month, 600 faxes
5 for \$20.00 per month, etc.

6 15. Defendant's calls constituted calls that were not for emergency
7 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

8 16. Defendant's calls were placed to telephone facsimile numbers
9 assigned to a telephone service for which Plaintiff incurs a charge for incoming
10 messages.

11 17. Plaintiff is not a customer of Defendant's services and has never
12 provided any personal information, including his telephone facsimile number(s), to
13 Defendant for any purpose whatsoever. Accordingly, Defendant never received
14 Plaintiff's "prior express consent" to receive calls using a telephone facsimile
15 machine pursuant to 47 U.S.C. § 227(b)(1)(C).

16 18. Furthermore, the messages that Defendant sent to Plaintiff lacked the
17 "opt-out" notice pursuant to 47 U.S.C. § 227(b)(2)(D).

18 19.

19 **CLASS ALLEGATIONS**

20 *THE CLASS*

21 20. Plaintiff brings this action on behalf of himself and all others similarly
22 situated, as a member of the proposed class (hereafter "The Class") defined as
23 follows:

24 All persons within the United States who received any
25 telephone facsimile messages from Defendant to said
26 person's telephone facsimile number made through the
27 use of any telephone facsimile machine and such person
28 had not previously consented to receiving such messages
and such messages did not contain any opt-out notice

1 within the four years prior to the filing of this Complaint

2
3 21. Plaintiff represents, and is a member of, The Class, consisting of All
4 persons within the United States who received any telephone facsimile messages
5 from Defendant to said person's telephone facsimile number made through the use
6 of any telephone facsimile machine and such person had not previously not
7 provided their telephone facsimile number to Defendant within the four years prior
8 to the filing of this Complaint, nor did the telephone facsimile message contain an
9 opt-out notice.

10 22. Defendant, its employees and agents are excluded from The Class.
11 Plaintiff does not know the number of members in The Class, but believes the Class
12 members number in the thousands, if not more. Thus, this matter should be certified
13 as a Class Action to assist in the expeditious litigation of the matter.

14 23. The Class is so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Class
16 members are unknown to Plaintiff at this time and can only be ascertained through
17 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
18 The Class includes thousands of members. Plaintiff alleges that The Class members
19 may be ascertained by the records maintained by Defendant.

20 24. Plaintiff and members of The Class were harmed by the acts of
21 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
22 and Class members via their telephone facsimile numbers thereby causing Plaintiff
23 and Class members to incur certain charges or reduced telephone facsimile time for
24 which Plaintiff and Class members had previously paid by having to retrieve or
25 administer messages left by Defendant during those illegal calls, and invading the
26 privacy of said Plaintiff and Class members.

27 25. Common questions of fact and law exist as to all members of The
28 Class which predominate over any questions affecting only individual members of
The Class. These common legal and factual questions, which do not vary between

1 Class members, and which may be determined without reference to the individual
2 circumstances of any Class members, include, but are not limited to, the following:

- 3
- 4 a. Whether, within the four years prior to the filing of this Complaint,
5 Defendant sent telephone facsimile messages (other than for
6 emergency purposes or made with the prior express consent of the
7 called party and with an opt-out notice contained in the messages) to
8 a Class member using any telephone facsimile machine to any
9 telephone number assigned to a telephone facsimile service;
- 10 b. Whether Plaintiff and the Class members were damaged thereby, and
11 the extent of damages for such violation; and
- 12 c. Whether Defendant should be enjoined from engaging in such conduct
13 in the future.

14 26. As a person who received numerous messages from Defendant using
15 a telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff
16 is asserting claims that are typical of The Class.

17 27. Plaintiff will fairly and adequately protect the interests of the members
18 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
19 class actions.

20 28. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Class members is impracticable. Even if every Class member could afford
23 individual litigation, the court system could not. It would be unduly burdensome
24 to the courts in which individual litigation of numerous issues would proceed.
25 Individualized litigation would also present the potential for varying, inconsistent,
26 or contradictory judgments and would magnify the delay and expense to all parties
27 and to the court system resulting from multiple trials of the same complex factual
28 issues. By contrast, the conduct of this action as a class action presents fewer
management difficulties, conserves the resources of the parties and of the court
system, and protects the rights of each Class member.

1 29. The prosecution of separate actions by individual Class members
2 would create a risk of adjudications with respect to them that would, as a practical
3 matter, be dispositive of the interests of the other Class members not parties to such
4 adjudications or that would substantially impair or impede the ability of such non-
5 party Class members to protect their interests.

6 30. Defendant has acted or refused to act in respects generally applicable
7 to The Class, thereby making appropriate final and injunctive relief with regard to
8 the members of the California Class as a whole.

9 *THE SUB-CLASS*

10 31. The class Plaintiff seeks to represent the (the “Sub-Class”) is defined
11 as follows:

12 All persons within the State of California who received
13 any telephone facsimile messages from Defendant to
14 said person’s telephone facsimile number made through
15 the use of any telephone facsimile machine and such
16 person had not previously consented to receiving such
17 messages and such messages did not contain any opt-out
18 notice within the four years prior to the filing of this
19 Complaint.

20 32. As used herein, the term “Sub-Class Members” shall mean and refer
21 to the member of the Sub-Class described above.

22 33. Excluded from the Sub-Class are Defendant, its affiliates, employees,
23 agents, attorneys, and the Court.

24 34. Plaintiff reserves the right to amend the Sub-Class and to add
25 additional subclasses, if discovery and further investigation reveals such warranted
26 action.

27 35. Upon information and belief, the proposed Sub-Class is composed of
28 thousands of persons. The members of the Sub-Class are so numerous that joinder

1 of all members would be unfeasible and impractical.

2 36. No violations alleged in this complaint are contingent on any
3 individualized interaction of any kind between the Sub-Class members and
4 Defendant.

5 37. Rather, all claims in this matter arise from the identical facsimile
6 transmissions the Sub-Class received from Defendant.

7 38. There are common questions of law and fact as to the FAL Class
8 Members that predominate over questions affecting only individual members,
9 including but not limited to:

- 10
11 a. Whether, within the four years prior to the filing of this Complaint,
12 Defendant sent telephone facsimile messages (other than for
13 emergency purposes or made with the prior express consent of the
14 called party and with an opt-out notice contained in the messages)
15 to a Class member using any telephone facsimile machine to any
16 telephone number assigned to a telephone facsimile service;
17 b. Whether Plaintiff and the Sub-Class members were damaged
18 thereby, and the extent of damages for such violation; and
19 c. Whether Defendant should be enjoined from engaging in such
20 conduct in the future.

21 39. As a person who received numerous messages from Defendant using
22 a telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff
23 is asserting claims that are typical of The Sub-Class.

24 40. Plaintiff will fairly and adequately protect the interests of the members
25 of The Sub-Class. Plaintiff has retained attorneys experienced in the prosecution
26 of class actions.

27 41. A class action is superior to other available methods of fair and
28 efficient adjudication of this controversy, since individual litigation of the claims
of all Sub-Class members is impracticable. Even if every Sub-Class member could
afford individual litigation, the court system could not. It would be unduly

1 burdensome to the courts in which individual litigation of numerous issues would
 2 proceed. Individualized litigation would also present the potential for varying,
 3 inconsistent, or contradictory judgments and would magnify the delay and expense
 4 to all parties and to the court system resulting from multiple trials of the same
 5 complex factual issues. By contrast, the conduct of this action as a class action
 6 presents fewer management difficulties, conserves the resources of the parties and
 7 of the court system, and protects the rights of each Sub-Class member.

8 42. The prosecution of separate actions by individual Sub-Class members
 9 would create a risk of adjudications with respect to them that would, as a practical
 10 matter, be dispositive of the interests of the other Sub-Class members not parties to
 11 such adjudications or that would substantially impair or impede the ability of such
 12 non-party Sub-Class members to protect their interests.

13 43. Defendant has acted or refused to act in respects generally applicable
 14 to The Sub-Class, thereby making appropriate final and injunctive relief with
 15 regard to the members of the Sub-Class as a whole

16 **FIRST CAUSE OF ACTION**

17 **Negligent Violations of the Telephone Consumer Protection Act**

18 **47 U.S.C. §227 et seq.**

19 44. Plaintiff hereby incorporates by reference the allegations contained
 20 in this complaint.
 21

22 45. The foregoing acts and omissions of Defendant constitute numerous
 23 and multiple negligent violations of the TCPA, including but not limited to each
 24 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

25 46. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
 26 seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
 27 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

28 47. Plaintiff and the Class members are also entitled to and seek

1 injunctive relief prohibiting such conduct in the future.

2 **SECOND CAUSE OF ACTION**

3 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

4 **47 U.S.C. §227 et seq.**

5 48. Plaintiff hereby incorporates by reference the allegations contained
6 in this complaint.

7 49. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple knowing and/or willful violations of the TCPA, including but not
9 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
10 *seq.*

11 50. As a result of Defendant's knowing and/or willful violations of *47*
12 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
13 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
14 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

15 51. Plaintiff and the Class members are also entitled to and seek
16 injunctive relief prohibiting such conduct in the future.

17 **THIRD CAUSE OF ACTION**

18 **For Violation of California Business & Professions Code § 17538.43**

19 52. Plaintiff hereby incorporates by reference the allegations contained
20 in this complaint.

21 53. California Business & Professions Code § 17538.43(b)(1) provides
22 as follows:

23 "It is unlawful for a person or entity, if either the person
24 or entity or the recipient is located within California, to
25 use any telephone facsimile machine, computer, or other
26 device to send, or cause another person or entity to use
27 such a device to send, an unsolicited advertisement to a
28 telephone facsimile machine."

54. The term “unsolicited advertisement” as defined by *Cal. Bus. & Prof. Code* § 17538.43 means: “any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person’s or entity’s prior express invitation or permission.”

55. Through the use of telephone facsimile machine(s), computer(s), and or other devices, Defendants sent or caused to be sent to the telephone facsimile number(s) of Plaintiff and the Sub-Class one or more unsolicited advertisements.

56. The faxes sent or caused to be sent by Defendant to Plaintiff and the Sub-Class constitute “unsolicited advertisements as defined by *Cal. Bus. & Prof. Code* § 17538.43. Each such fax advertised the commercial availability of services provided by the Defendant.

57. Through their conduct, Defendants violated *Cal. Bus. & Prof. Code* §17538.43, which prohibits the sending of unsolicited fax advertisements if either the person or entity or the recipient is located within California.

58. Accordingly, under *Cal. Bus. & Prof. Code* §17538.43, Defendants are liable to Plaintiff and the Subclass in the statutory damage amount of \$500 per each unsolicited fax advertisement sent, and, in the event it is found by a trier of fact that Defendants’ violations were willful or knowing, Defendants are liable to Plaintiff and the Subclass for treble damages of up to \$1500 per each unsolicited fax advertisement sent. *Cal. Bus. & Prof. Code* §17538.43 provides that these remedies may be recovered “[i]n addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Protection Act (47 U.S.C. § 227 *et seq.*).”

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 *et seq.*

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

For Violation of California Business & Professions Code § 17538.43

- As a result of Defendant's willful and/or knowing violations of *Cal. Bus. & Prof. Code* §17538.43, Plaintiff and the Sub-Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *Cal. Bus. & Prof. Code* §17538.43; and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

1. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff reserves their right to a jury on all issues so triable.

1 Respectfully Submitted this 28th day of January, 2019.

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3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

4 By: /s Todd M. Friedman

5 Todd M. Friedman

6 Law Offices of Todd M. Friedman

7 Attorney for Plaintiff

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Exhibit A